

## SECTION 5. PUBLIC AIRCRAFT OPERATIONS

### 1. GENERAL.

A. Historically, public aircraft have been exempt from many of the requirements in FAA regulations applicable to civil aircraft, including those governing aircraft airworthiness and flightcrew certification. The passage of Public Law 103-411 (the Independent Safety Board Act Amendment of 1994) made a major change in the definition of “public aircraft.” This change caused many former public aircraft operations to become subject to the regulations governing civil aircraft and pilot certification.

B. The general purpose of the new law, as reflected in legislative history, is to extend FAA regulatory oversight to some government aircraft operations. In part, Congress determined that government owned aircraft, which operate for commercial purposes or engage in transport of passengers, should be subject to the regulations applicable to civil aircraft. The new law, (with certain exceptions) preserved as public aircraft operations, those related to the performance of certain governmental functions and, further, allowed public agencies to receive reimbursement from other public agencies for some operations conducted in response to significant and imminent threats. The FAA was also authorized to grant exemptions for operations whose status had changed as a result of the new law.

**2. OPERATIONAL DEFINITIONS.** The status of an aircraft as a “public aircraft” or “civil aircraft” depends on its use in government service and the type of operation that the aircraft is conducting at the time. Rather than speaking of particular aircraft as public or civil, it is more accurate to speak of the operation as public or civil. For instance, an aircraft used in the conduct of a search and rescue mission in the morning can be operating in the performance of an inherent governmental function while carrying a rescue team, and is a public aircraft operation. That same aircraft may be operating in the afternoon carrying the governor of a State to a meeting and would then lose its public aircraft status and would be considered a civil aircraft operation.

A. The term “search and rescue” is frequently used in context with the term “public aircraft.” Rescue operations are most frequently conducted with aircraft equipped with external devices that would not be

authorized for operations on civil aircraft (i.e., rappelling anchors). Search operations and the subsequent rescue of persons that may be injured in remote or inaccessible areas are conducted with aircraft that do not meet the regulatory requirements for Class D external-load operations but are used in an emergency where the situation may be determined as “life-critical.” The Advisory Circular (AC) 00-1.1, Government Aircraft Operations, further defines the term as follows: search and rescue is a term meaning aircraft operations that are flown to locate people who cannot be located from the ground. The term includes operations where the aircraft is indispensable to the search, or is the only feasible means of reaching the victim. Victims would be considered to be “associated with” the search and rescue operation. The term “search and rescue” does not include routine medical evacuation of persons due to traffic accidents and other similar incidents or hospital-to-hospital patient transfers.

B. Medical evacuation as a general matter, is not considered a government function unless:

(1) The nature of the operation requires the use of an aircraft with special configurations, which may not be eligible for a standard airworthiness certificate,

(2) The victim cannot be accessed by ground transportation,

(3) Insufficient number of properly certified and equipped civil aircraft operating under the appropriate rule, are available to complete the mission, or

(4) Other, similar non-routine factors are present.

C. Even when the above listed factors are present, the public aircraft operator may be well advised to fully document that nature of the mission and the specific reason(s) for which a public aircraft operation was requested. In addition to providing a record of the operation, such documentation may mitigate or reduce legal liability or alleviate the threat of litigation itself.

D. Operators of government-owned aircraft that transport crewmembers or other persons (for other than commercial purposes) whose presence is required

to perform, or is associated with the performance of a governmental function (i.e., firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management) would still be considered a public aircraft operation. In each case, when these persons are transported the use of the aircraft must be necessary to perform the mission.

*E.* The FAA has consistently held that the term “for commercial purposes” is synonymous with “compensation or hire.” It is not necessary that a flight be conducted for monetary profit to be considered to be operated for compensation or hire. Even though there is only “cost reimbursement” from one unit of government to another, this reimbursement constitutes “compensation.” If however, the units of government share a common treasury, and the transfer of funds simply between government elements or where the reimbursement is simply an accounting of transactions within the same unit of government, these operations are not considered, for commercial purposes.

*F.* Government agencies may conduct both public and civil aircraft operations with the same aircraft. However, the operator will be required to maintain the aircraft in accordance with the appropriate regulations applicable to civil aircraft operations. Aircraft which hold airworthiness certificates, should be handled in accordance with the guidance provided in Order 8700.1, General Aviation Operations Inspector’s Handbook, volume 2, chapter 47, section 1, paragraph 5.

*G.* If one State agency reimburses another agency of the same State for the conduct of operations on its behalf using a State aircraft and the units share a common treasury, the operation is not considered to be “for commercial purposes.”

*H.* If a federal agency reimburses a State agency for conducting aircraft operations on the formers’ behalf using State-owned aircraft, the operation would be considered to be “for commercial purposes.” Generally this operation would be a civil aircraft operation unless the federal agency certified that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat. In that case and with federal agency certification the operation would be considered a public aircraft operation.

*I.* A lengthy discussion of public aircraft issues is contained in FAA Order 8400.10, Air Transportation

Operations Inspector’s Handbook, volume 1, chapter 4, sections 8. It is not the intent of this guidance to duplicate the information presented in that order; however, the General Aviation Operations Inspector should be aware of the process by which a determination is made as to the validity of a public aircraft operation.

### 3. OPERATING EXAMPLES.

*A.* It is perhaps easier to give examples of operations that do NOT conform to public aircraft operations than to describe public aircraft operations specifically. The aviation safety inspector (ASI) should be thoroughly familiar with the provisions of the AC 00-1.1. A few examples of prohibited operations under the Public Law are available in this document, but it is difficult to determine operations that are permitted.

*B.* Generally speaking, a public entity that responds to a situation that might involve transport by air may NOT operate as a public aircraft operation IF:

(1) The operation can be completed by another means of transport (road ambulance) or civilian/hospital air medical transport (Lifeguard helicopter). An example would be a traffic accident in an urban or downtown setting, on roads easily accessible to all vehicles.

(2) The transport operation has been scheduled in advance such as a patient transfer from hospital-to-hospital. A transport operation conducted as a routine flight, scheduled in advance can easily be accommodated by a civil operator and therefore, would not qualify as a public aircraft operation.

(3) A patient (or their insurance underwriter) is expected to pay for services that include the transport of a patient from an accident scene to a hospital or clinic. Since commercial action is involved, this operation would not qualify as a public aircraft operation.

(4) A public entity is reimbursed for services rendered and that reimbursement is NOT from a common treasury (i.e., a transfer of funds from one element of government to another element within that same government). In this case, if the federal government reimburses a local government for mosquito spraying operations, the operation could be considered “commercial” in nature.

(5) The transport of a rescued person from a search and rescue mission to a hospital UNLESS no

other means of transport is available and the mission can only be accomplished from the air.

#### **4. ROLE OF THE ASI.**

*A.* Congress mandated that the FAA provide regulatory oversight of some government aircraft operations. The role of the FAA includes surveillance and enforcement actions against government aircraft operators that operate for commercial purposes or engage in the transport of passengers.

*B.* One of the more difficult issues surround the phrase, “No service by a private operator was reasonably available.” This justification is frequently used at the dispatch centers when emergency response calls are received. The key phrase that needs to be evaluated is that of, “no private operator was available and capable of responding ...in a timely manner.” Dispatch organizations need to be made aware of their responsibility to the public and the government when providing a controlling and coordinating service.

*C.* Operators of government-owned aircraft holding any type of FAA certification will be included in the normal surveillance activities such as spot inspections of the aircraft and aircraft records. This includes any aircraft exclusively leased to the Federal government. Any aircraft or operation certificated by the FAA is subject to this surveillance regardless of whether they are acting as “public” or “civil.” For example, if a public aircraft operation is being conducted with an

aircraft that holds an airworthiness certificate, the operator’s maintenance records are subject for review. If an inspector encounters an operator who states they are operating under “public” status and questions arise concerning that operation, the regional public aircraft coordinator should be contacted for assistance. Government-owned certificated operators who are conducting public aircraft operations must be included in the FSDOs annual planned surveillance activities to ensure that their status remains unchanged.

*D.* When an ASI has been made aware of instances where public aircraft operators are providing services that are civil aircraft operations either due to their commercial nature or the type of operation being conducted the inspector should bring the issue to an immediate supervisor for further action. Initial contacts should be made with the Public Aircraft Representative in the regional office and coordinated with regional counsel and General Aviation and Commercial Division, Operations and Safety Program Support Branch, AFS-820.

*E.* It is not within the FAA’s purview to make direct contacts with agencies providing emergency dispatch services; however, the FSDO manager or a person designated by the regional office may be in a position to contact the supervising State agency, State Aviation Department, or county administrators. During a contact with a supervising agency, it would be appropriate to discuss violations of PL 103-441.

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